

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
International Business Reply Service  
Competitive Contract 3 (MC2011-21)  
Negotiated Service Agreement

Docket No. CP2012-59

ORDER APPROVING CHANGE IN PRICES UNDER  
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3  
NEGOTIATED SERVICE AGREEMENT AND PROVIDING ADDITIONAL GUIDANCE  
ON CONTINGENCY PRICING ARRANGEMENTS

(Issued March 31, 2014)

I. INTRODUCTION

The Postal Service has established contingency prices pursuant to an existing, albeit expired, International Business Reply Service Competitive Contract 3 (IBRS Competitive Contract 3) negotiated service agreement (Agreement).<sup>1</sup> For the reasons discussed below, the Commission approves the contingency prices.

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<sup>1</sup> Docket No. CP2014-36, Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 14, 2014 (Notice).

In Order No. 1480, the Commission approved the IBRS Competitive Contract 3 negotiated service agreement.<sup>2</sup> The Agreement expired on September 30, 2013. Notice at 2. On March 14, 2014, the Postal Service filed notice that it has established contingency prices pursuant to the Agreement. On March 18, 2014, the Commission issued an order reopening this docket to consider the contingency prices, closing Docket No. CP2014-36, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

The Postal Service intends for the change in prices to take effect on April 1, 2014. Notice at 3. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.*

The Postal Service also requests that the Commission include “the instant contingency arrangement within the IBRS Competitive Contract 3 designation on the competitive products list, due to its functional equivalence to the IBRS 3 baseline contract submitted in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract).” *Id.* at 2-3.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No other interested person submitted comments.

The Public Representative states that the indefinite term of the contingency pricing arrangement is “not ideal,” because customer behavior and Postal Service costs may vary from year to year. PR Comments at 2. She notes that the Public Representative in a similar docket questioned whether a contingency pricing

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<sup>2</sup> Order Approving New International Business Reply Service Competitive Contract 3 Agreement, September 27, 2012 (Order No. 1480).

<sup>3</sup> Notice and Order Concerning Change in Prices Under International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 18, 2014 (Order No. 2025).

<sup>4</sup> Public Representative Comments on Postal Service Notice of Filing of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 28, 2014 (PR Comments). The PR Comments were preceded by a Motion of the Public Representative for Late Acceptance of Comments, March 25, 2014. That motion is granted.

arrangement with an indefinite term was functionally equivalent to the relevant baseline agreement for that docket.<sup>5</sup> She concludes that contingency pricing arrangements for International Business Reply Service negotiated service agreements are intended to have limited (rather than indefinite) terms. PR Comments at 2, 3.

The Public Representative contends that actual costs may be underestimated in this proceeding, and therefore does not comment on whether the contingency prices cover attributable costs. *Id.* at 3. She questions specific cost inputs in the Postal Service's non-public financial workpapers, including the 2014 Priority Bag Terminal Dues Southbound Stream Rates from the 2014/2015 Bilateral Agreement between Canada Post and the United States Postal Service (footnotes section, row 179); the gross weight of Inbound Air Letter Class Mail (footnotes section, rows 186-87); and the total domestic transportation costs for air, highway, rail and water (footnotes section, rows 188-89). *Id.* She also expresses a concern that there is a numeric typographical error tied to the cost coverage formula. *Id.*

### III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

*Procedures for establishing contingency prices under IBRS negotiated service agreements.* This appears to be the first notice of contingency prices that the Postal Service has filed pursuant to an IBRS negotiated service agreement executed *after* the Commission's rules for competitive products took effect. For that reason, additional guidance is appropriate.

A typical IBRS negotiated service agreement establishes prices for postage-prepaid items returned from overseas locations to an entity based in the United States. The U.S.-based entity supplies preprinted, prepaid IBRS packaging to its overseas

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<sup>5</sup> *Id.* at 2, *citing* Docket No. CP2013-28, Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 26, 2012, at 3 (Docket No. CP2013-28 PR Comments).

customers, who may use the packaging to return consumer items to the U.S.-based entity at no cost to the customers. Because the U.S.-based entity's customers (and not the entity itself) determine when an IBRS item will be sent, the IBRS negotiated service agreement usually includes a mechanism to establish contingency prices that will apply in the event that customers send items after the agreement expires.

The Postal Service has established contingency pricing arrangements pursuant to at least two IBRS negotiated service agreements.<sup>6</sup> Each of these prior contingency pricing arrangements concerned IBRS negotiated service agreements that the Postal Service executed before the Commission's competitive product rules, 39 C.F.R. part 3015, took effect. Order No. 629 at 2; Order No. 1089 at 3; Order No. 1600 at 2. On each of those occasions, the Commission established new competitive product dockets for the consideration of the contingency prices and specified that the contingency pricing arrangement would be included within the IBRS Competitive Contract 1 product. Order No. 629 at 3; Order No. 1089 at 5; Order No. 1600 at 6. This approach was a reasonable way to bring older competitive negotiated service agreements into the regulatory framework established by 39 C.F.R. part 3015.

Consistent with this approach, the Postal Service filed the contingency pricing arrangement that is the subject of this Order in a new docket. Notice at 1. However, unlike previous contingency pricing arrangements, this arrangement was established pursuant to an IBRS negotiated service agreement executed after the Commission's competitive product rules took effect. See Order No. 1480. When contingency prices are established pursuant to an IBRS negotiated service agreement executed after the Commission's competitive product rules took effect, the Postal Service should file notice

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<sup>6</sup> See Docket No. CP2010-17, Order Concerning Change in Prices for International Business Reply Service Contract 1 Negotiated Service Agreement, December 30, 2009 (Order No. 377); Docket No. CP2011-43, Order Concerning Contingency Prices for International Business Reply Service Competitive Contract 1, December 29, 2010 (Order No. 629); Docket No. CP2012-5, Order Including Contingency Price Arrangement Within International Business Reply Service Competitive Contract 1 Product, December 30, 2011 (Order No. 1089); *and* Docket No. CP2013-28, Order Approving Inclusion of Contingency Pricing Arrangement within International Business Reply Service Competitive Contract 1 Product, December 28, 2012 (Order No. 1600). Order Nos. 377, 629, and 1600 concerned the same underlying negotiated service agreement.

of the contingency pricing arrangement in the docket relating to the agreement. See Order No. 2025 at 2.

As it did for previous contingency pricing arrangements, the Postal Service requests that the Commission include the arrangement that is the subject of this Order “within the IBRS Competitive Contract 3 designation on the competitive products list, due to its functional equivalence to the IBRS 3 baseline contract submitted in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract).” Notice at 2-3.

The competitive product list, as its name implies, is a list of each competitive product offered by the Postal Service. It is published in the Code of Federal Regulations as Appendix A to subpart A of 39 C.F.R. part 3020, and it also appears as part 2000 of the Mail Classification Schedule (MCS). The MCS is a comprehensive description of the products offered by the Postal Service.

The IBRS Competitive Contract 3 product entry on the competitive product list reads: “International Business Reply Service Competitive Contract 3 (MC2011-21 and CP2011-59).”<sup>7</sup> This entry is not modified when additional agreements are added to the IBRS Competitive Contract 3 product.<sup>8</sup> By the same token, the Commission will not modify the entry to reflect a contingency pricing agreement entered into pursuant to an existing IBRS Competitive Contract 3 negotiated service agreement.<sup>9</sup>

The MCS, in contrast, is modified when additional agreements are added to the IBRS Competitive Contract 3 product.<sup>10</sup> Currently, the MCS lists the contingency pricing arrangement approved in Docket No. CP2012-5 as an agreement included in the IBRS Competitive Contract 1 product, despite the fact that that underlying negotiated service

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<sup>7</sup> Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011, at 9 (Order No. 684).

<sup>8</sup> See, e.g., Docket No. CP2014-28, Order Approving Additional International Business Reply Service 3 Negotiated Service Agreement, February 27, 2014 (Order No. 2002) (adding additional negotiated service agreement to the IBRS Competitive Contract 3 product without changing competitive product list).

<sup>9</sup> The Commission’s rules specify the manner in which a Postal Service request to modify the competitive product list must be made. 39 C.F.R. 3020 subpart B. The Postal Service’s filing in Docket No. CP2014-36 did not request to change the competitive product list pursuant to these rules.

<sup>10</sup> See MCS section 2515.3.5.

agreement expired and only contingency prices are in effect. *Id.* The MCS does not list the contingency pricing arrangements approved in Docket No. CP2011-43 or CP2013-28. The Commission finds that revisions to the MCS to specify which agreements included within the IBRS Competitive Contract 1 and IBRS Competitive Contract 3 products are in fact contingency pricing arrangements would be helpful and consistent with Order Nos. 1089 and 1600. Conforming revisions appear below the signature of this Order.

*Functional equivalence.* The Public Representative contends that a contingency pricing arrangement with an indefinite term is inconsistent with contingency pricing arrangements the Postal Service has previously established under IBRS negotiated service agreements and with examples of contingency pricing arrangements the Postal Service provided to the Commission in connection with the IBRS Competitive Contract 1 product. PR Comments at 2. Although the Commission has approved contingency pricing arrangements with fixed terms in the past,<sup>11</sup> the two most recent contingency pricing arrangements approved by the Commission have indefinite terms.<sup>12</sup>

The Public Representative also cites the comments of the Public Representative in Docket No. CP2013-28 to support her argument that a contingency pricing arrangement with an indefinite term is not functionally equivalent to the baseline IBRS Competitive Contract 1 product. PR Comments at 2. This argument is not persuasive, for three reasons. First, in Docket No. CP2013-28, the Public Representative ultimately concluded that the contingency pricing arrangement in that docket was functionally equivalent to the baseline IBRS Competitive Contract 1 agreement, despite its indefinite term.<sup>13</sup> The Commission agreed. Order No. 1600 at 5-6. Second, the Commission determines the functional equivalence of IBRS Competitive Contract 3 negotiated service agreements with reference to the baseline agreement established in Order

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<sup>11</sup> See Order Nos. 377 and 629 (approving contingency pricing arrangements with 1-year terms).

<sup>12</sup> See Order Nos. 1089 and 1600 (approving contingency pricing arrangements with indefinite terms).

<sup>13</sup> Docket No. CP2013-28, PR Comments at 3-4.

No. 684, not Order No. 178 upon which the Public Representative relied.<sup>14</sup> Third, and most significantly, the Commission has already determined that the IBRS Competitive Contract 3 negotiated service agreement authorizing the contingency pricing agreement that is the subject of this Order is functionally equivalent to the baseline agreement established in Order No. 684. Order No. 1480 at 4. As discussed above, unlike previous contingency pricing arrangements, the arrangement that is the subject of this Order was established pursuant to a negotiated service agreement for which the Commission has already made a finding of functional equivalence. The indefinite term of the arrangement is not sufficient to alter the Commission's conclusion in Order No. 1480.

*Cost considerations.* The Commission reviews competitive product prices to ensure that they meet the applicable requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

The Commission carefully reviewed the cost inputs cited by the Public Representative. It verifies that, with the exception of the gross weight of Inbound Air Letter Class Mail, which is used as proxy for IBRS items, all of the costs reflect their correlating footnotes. With respect to the gross weight of Inbound Air Letter Class Mail, it appears that the Postal Service may have inadvertently cited the source as ICRA-FY-13 (USPS—FY13-NP2, Docket No. ACR2013, Revised 2/6/2014), Domestic Tran Calcs.xls file, wcufr tab. Rather, the gross weight used as a cost input corresponds to the "annual" tab in the same file. The latter file provides the appropriate gross weight to be used for cost calculations. Therefore, the citation is incorrect, but the cost input is correct.

With respect to the Public Representative's concern regarding a possible numeric typographical error tied to the cost coverage formula, the Commission checked the cells referenced by the Public Representative related to the average weight of an IBRS item. The Commission confirms that the numeric values in these cells are correct,

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<sup>14</sup> Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009 (Order No. 178).

albeit different from those in the original filing. The difference in the numbers reflects an updated average weight per piece used in the current filing based on the Postal Service's most recent historical data. Therefore, the Commission finds no errors within the cost coverage formula.

The supporting revenue and cost data show that the contingency prices established by the Postal Service should cover costs for the remaining postal items subject to the Agreement. The Commission will continue to review the cost coverage of the Agreement in its Annual Compliance Determination to ensure that the contingency prices cover costs.

*Other considerations.* The Postal Service states that the contingency prices will take effect April 1, 2014. Notice at 3. The contingency prices will remain in effect "unless the Postal Service chooses to modify the rates." *Id.* If the Postal Service changes the contingency prices, it shall promptly notify the Commission.

In conclusion, the Commission approves the contingency prices established pursuant to the Agreement.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the contingency prices established pursuant to the International Business Reply Service Competitive Contract 3 negotiated service agreement that is the subject of this docket.
2. The Postal Service shall promptly notify the Commission if it changes the contingency prices approved in this Order.



3. Revisions to the Mail Classification Schedule consistent with this Order appear below the signature of this Order and are effective immediately.

By the Commission.

Shoshana M. Grove  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### PART B—COMPETITIVE PRODUCT LIST

2500            Negotiated Service Agreements

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2515            Inbound International

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2515.3          International Business Reply Service (IBRS) Competitive Contracts

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2515.3.5        Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- International Business Reply Service Competitive Contract 1  
*Baseline Reference*  
Docket Nos. MC2009-14, CP2009-20  
PRC Order No. 178  
*Included Agreements*  
CP2012-5 (contingency pricing arrangement), expires TBD  
CP2013-28 (contingency pricing arrangement), expires TBD
- International Business Reply Service Competitive Contract 3  
*Baseline Reference*  
Docket Nos. MC2011-21, CP2011-59  
PRC Order No. 684  
*Included Agreements*  
CP2012-59 (contingency pricing arrangement), expires TBD

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